WISMA DENMARK SDN BHD

v.

PENTADBIR TANAH WILAYAH PERSEKUTUAN KUALA LUMPUR

HIGH COURT MALAYA, KUALA LUMPUR
PRASAD SANDOSHAM ABRAHAM JC
[LAND REFERENCE NO: S2-15-13-2007]
7 APRIL 2011

LAND LAW: *Acquisition of land - Compensation - Adequacy of - Determination - Whether private valuer reliable and safe to rely upon - Whether claim for injurious affection justifiable for land not yet acquired - Method for calculation of market value and injurious affection - Land Acquisition Act 1960*

The present land reference arose from an objection filed by the landowner against the respondent's award in respect of the compulsory acquisition under the Land Acquisition Act 1960 ("the Act") of a total area of 2,353.64 square meters ('sm') from Lot Nos 38 and 39 respectively in Section 45, Town of Kuala Lumpur. The total titled area of Lot Nos 38 and 39 was 4,390.4217 sm. The only issue for determination was the adequacy of the compensation awarded by the respondent. The applicant contended that the court should disregard the valuation reports of the government valuer for the respondent and be guided by the findings of the private valuer. Based on the private valuer's report, the subject property was located in a desirable commercial area and was expected to maintain its appeal for commercial development in the foreseeable future. The private valuer took as evidences of value, transactions involving four properties, while the government valuer took as evidences of value transactions involving 11 groups of properties. Counsel for the applicant also argued that the respondent was wrong in not awarding the applicant injurious affection for damages suffered and to be suffered by the applicant's remaining land. The government valuer however held the view that injurious affection should only be awarded for Lot No. 38 as it was directly affected by the acquisition exercise.

Held (varying the respondent's decision and award):

(1) The approach of the private valuer was flawed. The private valuer relied as part of his valuation basis, on two sale evidences involving properties located within the Golden Triangle when the said land was located outside of the

A Golden Triangle. Secondly, the private valuer arbitrarily adopted the price of RM1,000 per sq ft as the market value of the said land as at 24 October 1996 when the average price of the four sale evidences adopted by him was only RM700 per sq ft. (para 39)

B **(2)** The private valuer was unreliable and it was unsafe to rely on the market value prepared by this private valuer. (para 41)

(3) The private valuer had included in his claim for injurious affection, Lot Nos. 17, 41 and 42 Section 45 that adjoined
C Lot No. 39 which was not acquired. The applicant failed to satisfy the court that they had in fact suffered damages for the land that was not acquired due to injurious affection. (paras 43 & 44-45)

D **(4)** No hard and fast rule can be laid down regarding the method to be adopted for assessing the proper market value of the land acquired and compensation to be awarded for injurious affection. Each case would have to be considered in the light of its special features and special circumstances. (paras 45-47)

E **(5)** The construction of the access road to the elevated highway would not adversely affect the ability of the applicant to implement any approved development plan on Lot Nos. 17, 41 and 42 in Section 45. The applicant's ability to continue to
F use and enjoy Lot Nos. 17, 41 and 42 would also not be adversely affected by the construction of the access road to the elevated highway on the acquired portion of Lot Nos. 38 and 39. Hence no injurious affection could be awarded for Lot Nos. 17, 41 and 42, Section 45. (paras 51-53)

G **(6)** Injurious affection could be awarded only for the remaining un-acquired portion of Lot Nos. 38 and 39, Section 45 at the rate of 30% of their market value as at 24 October 1996. (para 55)

H **(7)** In light of the provisions of Para. 1(A) in the First Schedule of the Act and after considering the respondent's sale evidences and the private valuer's sale evidences, the respondent's decision and award of compensation for the said land ought to be amended and varied accordingly. (para 56)

I

Case(s) referred to:

Lim Foo Yong Ltd v. The Collector of Land Revenue [1962] 1 LNS 87 PC ***(refd)***

Thomas Christopher Cowper Essex and The Local Board for the District of Acton in the County of Middlesex reported in HL (E) 1889 ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 4, 8, 40D(3), 49(1)

For the applicant - TJ Su (SY Cheong & KL Pang with him); M/s Cheah Teh & Su

For the proposed intervener - Roslan (Siti Rahaizah & Cindy Jasmine with him) DPP

Assessors (sitting with judge) - Abdul Halim Yaakub (Government) & Dr Ernest Cheong Yong Yin (Private)

Reported by Amutha Suppayah

JUDGMENT

Prasad Sandosham Abraham JC:

[1] The aforesaid land reference arose from an objection filed by the landowner against the award of the respondent in respect of the compulsory acquisition under the Land Acquisition Act 1960 ('the Act') of a total area of 2,353.64 square meter ('sm') (25,325 sq ft) from Lot Nos 38 and 39 (New Lot No. 50) held under Geran 13692 and Geran 13693 respectively both in Section 45, Town of Kuala Lumpur, Federal Territory of Kuala Lumpur (the said Land) per details as follows:

Lot No.	Original Land Area		Land Area Acquired	
	Sq. Metre	Sq. Ft	Sq. Metre	Sq. Ft
38	2,431.1509	26,159	1,824.06	19,627
39 (New Lot 50)	1,959.2708	21,082	529.58	5,698
Total	4,390.4217	47,241	2,353.64	25,325

[2] The total titled area of Lot Nos 38 and 39 (New Lot No. 50) were 4,390.4217 square meter (sm) (47,241 square foot) (see above)

[3] The compulsory acquisition under the Land Acquisition Act 1960 (the Act) of a total area of 2,353.64 square meter (sm) or 25,325 sq ft from Lot Nos 38 and 39 (New Lot No. 50) was for the purposes of "*Projek Lebuhraya Tingkat (Elevated Highway) atas Sungai Klang dan Sungai Ampang dari Ulu Klang/Ampang ke Kuala Lumpur (Pakej A Dan Pakej B)*"

[4] There was only one issue for determination in this land reference, namely the adequacy of the "compensation" awarded by the respondent (see *Borang N - Permohonan Supaya Bantahan Dirujukkan Kepada Mahkamah annexed as encl. M in the buku rujukan* filed by the respondent).

[5] It is apposite therefore at the outset to point out s. 40D(3) of the Act (decision of the court on compensation) which reads as follows:

> (3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter

[6] Reiterating this position in law that a decision of the court on compensation is final and not appealable, s. 49(1) of the Act further provides:

> Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to Section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[7] Based on the above referred provisions of the Act, there definitely arises a preliminary issue of whether an appeal, as is brought now by the applicant, against the decision of this court on compensation, is justifiable or a competent one at all. Notwithstanding that, we set out below the grounds for our decision.

[8] A notification under s. 4 of the Act that the said land was likely to be needed for the purposes of "*Projek Lebuhraya Tingkat (Elevated Highway) atas Sungai Klang dan Sungai Ampang dari Ulu Klang/Ampang ke Kuala Lumpur (Pakej A Dan Pakej B)*" was published in the Government Gazette on 24 October 1996 (*Warta Kerajaan Persekutuan* No. 9710/24.10.1996 referred to as encl. Cl but not annexed in the *buku rujukan ke mahkamah* filed by the respondent).

[9] A Notification under s. 8 of the Act that the said land was required for the purposes of *"Projek Lebuhraya Tingkat (Elevated Highway) atas Sungai Klang dan Sungai Ampang dari Ulu Klang/ Ampang ke Kuala Lumpur (Pakej A Dan Pakej B)"* was published in the Government Gazette on 7 November 1996 (*Warta Kerajaan Persekutuan* No. 13012/07.11.1996 annexed as encl. D1 pp. 13 - 15 in the *buku rujukan ke mahkamah* filed by the respondent).

[10] In the light of the publication of the s. 8 notification on 7 November 1996 within 12 months of the publication of the Section 4 notification on 24 October 1996, as provided in s. 4 of the Act the material date for this compulsory acquisition, for the purposes of determining the market value and hence the compensation payable was 24 October 1996, the date of publication of the s. 4 notification in the Government Gazette of the *"Pemberitahu Bahawa Tanah Mungkin Diambil"* under s. 4 of the Act (*Warta Kerajaan Persekutuan* No. 9710/24.10.1996 referred to as encl. C1 but not annexed in the *buku rujukan ke mahkamah* filed by the respondent).

[11] Section 4 of the Act on "preliminary notice" reads as follows:

> (1) Whenever the State Authority is satisfied that any land in any locality in the State is likely to be needed for any of the purposes referred to in section 3 a notification in Form A shall be published in the Gazette.
>
> (2) The Land Administrator shall give public notice of any notification published under subsection (1) in the manner prescribed by section 52.
>
> (3) A notification under subsection (1) shall lapse in so far as it relates to any land or part of any land in respect of which there is not published in the Gazette within twelve months from the date of publication of such notification a declaration under section 8(1)

[12] The relevant titled particulars of the said land as found in the documents of title included the following:

Lot No. 38

Luas Tanah	:	0 ekar 3 rood 29.1 pole (2,341.1509 meter persegi)
Cukai Tanah	:	RM85.00
Kegunaan Tanah	:	Bangunan

Pegangan	:	Selama-lamanya (Kekal)
Syarat-Syarat Nyata	:	Tiada
Sekatan Kepentingan	:	Tiada
Pemilek Berdaftar	:	Wisma Denmark Sdn Bhd

Lot No. 39 (Lot Baru 50)

Luas Tanah	:	0 ekar 2 rood 1.4 pole (1,959.2708 metre persegi)
Cukai Tanah	:	RM45.00
Kegunaan Tanah	:	Bangunan
Pegangan	:	Selama-lamanya (Kekal)
Syarat-Syarat Nyata	:	Tiada
Sekatan Kepentingan	:	Tiada
Pemilek Berdaftar	:	Wisma Denmark Sdn Bhd

[13] For purposes of a clearer picture of the award of the respondent on compensation, the following table shows the head of compensation and the respective assessment/valuation of the government valuer, the private valuer and the award of the respondent:

Head of Compensation	Government Valuer's Assessment	Private Valuer's Assessment WISMA DENMARK	Award of Respondent
	RM	RM	RM
Market Value of said Land as at 24-10-1996	Lot 38 (RM) 10,013,339.71 @5,849.59 psm @510.00 psf Lot 39 (RM) 3,078,186.93 @5,812.51 @540.00 psf	Lot 38 (RM) 19,634,000.00 @10,763.90 psm @1,000.00 psf Lot 39 (RM) 5,700,000.00 @10,763.90 @1,000.00 psf	Lot 38 (RM) 10,013,339.71 @5,849.59 psm @510.00 psf Lot 39 (RM) 3,078,186.93 @5,812.51 psm @540.00 psf
Injurious Affection on remaining land	No recommendation for award for Injurious Affection	Lot 17, 38, 39 41 & 42 Total Claimed: RM12,312.000.00 Represented by Lot 17 (RM) 3,267,00.00 @10,890 sq ft x RM1,000.00 x 30%	No award for Injurious Affection

Head of Compensation	Government Valuer's Assessment	Private Valuer's Assessment WISMA DENMARK	Award of Respondent
	RM	RM	RM
		Lot 38 (RM) 1,960,500.00 @6,535 sq ft x RM1,000.00 30% Lot 39 (RM) 4,616,700.00 @15,389 sq ft x RM1,000.00 30% Lot 41 (RM) 2,247,600.00 @7,492 sq ft x RM1,000.00 30% Lot 42 (RM) 220,500.00 @735 sq ft x RM1,000.00 30%	

[14] Based on the valuation report dated 30 January 1997 prepared by the private valuer for Wisma Denmark Sdn Bhd, the private valuer stated that the subject property is located in a desirable commercial area at the fringe of Kuala Lumpur's Golden Triangle and within the block bounded by Jalan Ampang on the south, Jalan Sultan Ismail on the east, Sungai Kelang on the north and Jalan Dang Wangi on the west.

[15] The private valuer for Wisma Denmark Sdn Bhd further added that the neighbourhood of the subject property is fully developed with a variety of commercial structures ranging in height from one to 20 or more stories. According to the private valuer, the structures vary in age from new (Wisma Denmark and Menara Safuan) to pre-war construction (Bangunan Harrison & Crossfield).

[16] The private valuer further stated that this locality is within walking distance from some of the leading hotels and office complexes in the city including the Kuala Lumpur City Centre that houses the Petronas Twin Towers.

[17] The private valuer concluded that "The Subject Property, being located by the Jalan Sultan Ismail and Jalan Raja Abdullah junction and at the fringe of Kuala Lumpur's Golden Triangle is expected to maintain its appeal for commercial development in the foreseeable future".

[18] In support of his position, the private valuer included in his valuation report dated 30 January 1997 and as evidences of value, transactions involving four properties (see *Laporan Nilaian daripada Tuan Tanah* annexed as encl. G, pp. 19-61 in the *buku rujukan ke mahkamah* filed by the respondent).

[19] Of the four groups of properties involved, only two of the property groups, namely Lot No. 26 Section 43 (Item 1 in the Private Valuers' Schedule of Comparable Sales) and Lot Nos. 10, 30 and 33-36, Section 45 (Item 4 in the Private Valuers' Schedule of Comparable Sales) may be considered comparable with the said land. The remaining two property groups (Items 2 and 3 in the private valuers' Schedule of Comparable Sales) are located within the Golden Triangle and are superior in location compared to the said land.

[20] Based on the valuation report dated 7 April 1997 prepared by the government valuers, contrary to the private valuer's valuation report, stated that the said land is located in the vicinity of residential houses in Kampung Baru, Jalan Yap Kwan Seng and the then under construction Bangunan Mariana, the General Hospital, the National Heart Hospital and the National Library.

[21] In support of his position, the government valuer included in his valuation report dated 7 April 1997 and as evidences of value transactions involving 11 groups of properties (see exh. C, Lampiran E1 (1-11) And *Lampiran F Laporan Nilaian Jabatan Penilaian dan Perkhidmatan Harta*).

[22] Of the 11 groups of properties involved, only two of the property groups, namely Lot No. 26 Section 43 (Items 10 in the Government Valuers' Butir-Butir Perbandingan Jualbeli Hartanah) and Lot Nos. 17, 37, 38, 39, 41 and 42, Section 45 (Item 11 in the Government Valuers' Butir-Butir Perbandingan Jualbeli Hartanah) may be considered comparable with the said land (see exh. C, *Lampiran El* (10-11) and *Lampiran F Laporan Nilaian Jabatan Penilaian Dan Perkhidmatan Harta*).

[23] It is observed that Item 11 in the Government Valuers' *Butir-Butir Perbandingan Jualbeli Hartanah* that was adopted by the government valuer as sale evidence involved the sale of six properties on 29 December 1993 from IGB Corporation Sdn Bhd to Wisma Denmark Sdn Bhd. Included in the six properties was the said land, namely Lot Nos. 38 and 39 Section 45.

[24] The remaining nine properties (Items 1-9 in the Government Valuers' *Butir-Butir Perbandingan Jualbeli Hartanah*) involved shop lots having land areas ranging from 1,600 sq ft (148.65 sq metres) to 4,820 sq ft (447.95 sq metres) that are much smaller than the 47,241 sq ft (4,390.4217 sq metres) pre-acquisition combined land areas of the said land (see exh. C, *Lampiran El (10-11) and Lampiran F Laporan Nilaian Jabatan Penilaian dan Perkhidmatan Harta*).

[25] In terms of their location, the nine groups of properties (Items 1-9 in the Government Valuers' *Butir-Butir Perbandingan Jualbeli Hartanah*) are located across Sungai Kelang to the east of the said land and in the vicinity of the Jalan Dang Wangi/ Kampung Baru commercial area. Whereas the remaining two property groups (Items 10-11 in the Government Valuers' *Butir-Butir Perbandingan Jualbeli Hartanah*) are located on the same side of Sungai Kelang as the said land and similar with the said land in that they also front Jalan Ampang and are on the fringe of the Golden Triangle.

[26] The assessors are in agreement that in respect of the four Evidences of Value adopted by the private valuer for Wisma Denmark Sdn Bhd, Items No 2 and No 3 (encl. G, pp. 59-60 in the *buku rujukan ke mahkamah* filed by the respondent) do not meet some or all of the tests required to be passed in order to be accepted as "Comparable Sales" in that they are located within the Golden Triangle, in a more superior location than the said Land.

[27] In respect of the remaining two evidences of value adopted by the Private Valuer for Wisma Denmark Sdn Bhd, the assessors consider that Item No 4 (encl. G, pp. 59-60 in the *buku rujukan ke mahkamah* filed by the respondent) does not meet some or all of the tests required to be passed in order to be accepted as "comparable sales" in that it was transacted on 13 January 1984, a long time ago, in fact more than 12 years before the acquisition

of the said land, and the transacted price of RM34,149,000 or RM370 per sq ft for the 92,188 sq ft (8,567.65 sq metres) land area was not representative of market condition prevailing as at 24 October 1996.

[28] The assessors find that in respect of the four Evidences of Value adopted by the Private Valuer for Wisma Denmark Sdn Bhd, only Item No 1 (encl. G, pp. 59-60 in the *buku rujukan ke mahkamah* filed by the respondent) namely Lot No 26, Section 43, Jalan Ampang, Kuala Lumpur may be considered to have met the tests to be accepted as "comparable sales" in that it is located on Jalan Ampang and at the fringe of the Golden Triangle, similar in location to the said land.

[29] In respect of the 11 Evidences of Value adopted by the Government Valuer, the Assessors consider that Items 1-9 in the Government Valuers' *Butir-Butir Perbandingan Jualbeli Hartanah*, do not meet some or all of the tests required to be passed in order to be accepted as "comparable sales" in that they involved shoplots having land areas ranging from 1,600 sq ft (148.65 sq metres) to 4,820 sq ft (447.95 sq metres) that are much smaller than the 47,241 sq ft (4,390.4217 sq metres) pre-acquisition combined land areas of the said land.

[30] The location of the nine groups of properties (Items 1-9 in the Government Valuers' *Butir-Butir Perbandingan Jualbeli Hartanah*) being situated across Sungai Kelang to the east of the said land and in the vicinity of the Jalan Dang Wangi/Kampung Baru commercial area are not comparable with the location of the said land in that the said land is located on the western bank of Sungai Kelang and is on the fringe of the Golden Triangle and has a frontage to Jalan Ampang.

[31] In respect of Item No 11 in the Government Valuer's Government Valuers' *Butir-Butir Perbandingan Jualbeli Hartanah*, namely Lot Nos. 17, 37, 38, 39, 41 and 42, Section 45, that were transacted on 29 December 1993 and that also included the said land may be considered to have passed the tests required for acceptance as "comparable sales" for the valuation of the said land (see exh. C, lampiran El (10-11) And lampiran F Laporan Nilaian Jabatan Penilaian Dan Perkhidmatan Harta).

[32] The assessors also considered that item No 10 in the Government Valuer's Government Valuers' *Butir-Butir Perbandingan Jualbeli Hartanah* (see exh. C, *Lampiran El* (10-11) and *Lampiran*

F Laporan Nilaian Jabatan Penilaian dan Perkhidmatan Harta) namely Lot 26 Section 45, that was also adopted as an Evidence of Sale by the Private Valuer for Wisma Denmark Sdn Bhd (see encl. G, pp. 59-60 in the *buku rujukan ke mahkamah* filed by the respondent) meets the tests required to be accepted as "comparable sales" in that this property that was transacted on 30 October 1996 is located on Jalan Ampang and on the fringe of the Golden Triangle as is the case with the said land.

[33] It is to be noted that both the Government Valuer and the Private Valuer have adopted Lot No. 26, Section 43, Jalan Ampang, Kuala Lumpur as their common sales comparable.

[34] After having taken into consideration the provisions in para. 1A in the first schedule of the Act, the assessors are minded to adopt Item Nos 10 and 11 in the Government Valuer's *Butir-Butir Perbandingan Jualbeli Hartanah* and also to adopt Item 1 in the private valuer's list of evidences of sales, as their basis and starting point for determining the fair market value for the said land as at 24 October 1996 and hence the fair compensation to be awarded to Wisma Denmark Sdn Bhd.

[35] Paragraph 1A in the first schedule of the Act reads as follows:

> In assessing the market value of any scheduled land, the valuer may use any suitable method of valuation to arrive at the market value provided that regards may be had to the prices paid for the recent sales of lands with similar characteristics as the scheduled land which are situated within the vicinity of the scheduled land and with particular consideration being given to the last transaction on the scheduled land within two years from the date with reference to which the scheduled land is to be assessed under paragraph (1)

[36] After hearing from the respective valuers and counsel for the parties, the decision of this court was delivered orally on 29 November 2010.

Decision

[37] Keeping in mind the award of this court was merely on quantum, the thrust of the applicant's argument was that since the said land were located within walking distance from the Kuala Lumpur City Centre that houses the Petronas Twin Towers and some of Kuala Lumpur's leading hotels and office complexes and

since the said land was expected to maintain its appeal for commercial development in the foreseeable future (from 24 October 1996), that fair and adequate compensation should be awarded to the applicant and counsel for the applicant urges the court to disregard the valuation reports of the government valuer for respondent and be guided by the findings of the Private Valuer Azmi & Co (see encl. G, pp. 19-61 in the *buku rujukan ke mahkamah* filed by the respondent).

[38] Counsel for the respondent urges this court to uphold the findings and the award made by respondent at the land enquiry. The court when dealing with this matter bore in mind the principles relating to the determination of compensation set out in the First Schedule to the Land Acquisition Act 1960 and sets out for ease of reference paras. 1(1), (a) & (b), and para. 1(2)(a).

> (1) For the purposes of this Act the term "market value" where applied to any scheduled land shall mean the market value of such land;
>
> (a) At the date of publication in the Gazette of the notification under section 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under section 8 in respect of all or some part of the land in the locality specified; or
>
> (b) In other cases, at the date of the publication in the Gazette of the declaration made under section 8
>
> (2) In assessing the market value
>
> (a) the effect of any express or implied condition of title restricting the use to which the scheduled land may be put

[39] Looking at the private valuation report referred to above, the approach of the private valuer is flawed. In the first instance the private valuer relied as part of his valuation basis, two sale evidences involving properties located within the Golden Triangle when the said land is located outside of the Golden Triangle. Secondly, the private valuer arbitrarily adopted the price of RM1,000 per sq ft as the market value of the said land as at 24 October 1996 when the average price of the four sale

evidences adopted by him was only RM700 per sq ft. Bearing in mind that three of the four sale evidences were transacted during the period from 15 July 1995 to 30 October 1996, (the remaining sale evidence was transacted on 13 January 1984, more than 12 years before the acquisition of the said land and therefore ignored by the assessors) the assessors asked the private value to justify his decision to increase his valuation of the said land to RM1,000 per sq ft, that is by about RM300 per sq ft or 42% more than the average price of RM700 per sq ft analyzed from his three best sale evidences.

[40] In reply to the assessors' request the private valuer merely asserted that that was his professional opinion without providing any evidence or basis to support his "Professional Opinion".

[41] The court finds the private valuer for Wisma Denmark Sdn Bhd to be unreliable and considers it would be unsafe to rely on the private valuation report prepared by this private valuer (see Handbook for Assessors Vol. No. 1 (1999) cited by counsel for the 2nd applicant and I quote:

> Not any Court had yet been bound by any particular valuation method. Each case must be governed by the facts of that particular case. The duty of the Court was to determine the "fair market value" of the land acquired after taking all matters before it into consideration.

[42] Counsel for the applicant argued that the respondent was wrong in not awarding the applicant injurious affection for damages suffered and to be suffered by the applicant's remaining land. The private valuer for Wisma Denmark Sdn Bhd in his valuation report claimed a total sum of RM12,312,000 as compensation for injurious affection suffered and to be suffered by the applicant's remaining five properties. For details of the private valuer's computation of his claim as follows:

Scheduled Land

Lot No	Area remaining (sq. ft)	(sq. ft)
38	6,535	
39	15,389	21,924

Non Scheduled Land

Lot No	Area remaining (sq. ft)	
17	10,890	
41	7,492	
42	735	19,117
Total remaining land		41,041
Depreciation in value (30% x RM1,000.00		RM300
Total		RM12,312,300

Applicant's Claim for Injurious Affection RM12,312,000

Refer to Enclosure G, p. 44 In The Buku Rujukan Ke Mahkamah filed by the Respondent For More Details

[43] It is noted the private valuer had included in his claim for injurious affection, Lot Nos. 17, 41 and 42 Section 45 that adjoins Lot No. 39 that were not acquired.

[44] In support of their claim for injurious affection in respect of Lot Nos. 17, 41 and 42 Section 45 although they were not part of the scheduled land and were not acquired, counsel for the applicant cited the English case of *Thomas Christopher Cowper Essex and The Local Board for the District of Acton in the County of Middlesex reported in HL (E) 1889*. The principle to be applied can be found in the decision of the Privy Council in *Lim Foo Yong Ltd v. The Collector of Land Revenue* [1962] 1 LNS 87; [1963] 29 MLJ 69. It is similar to our case whereby it was contended that the award did not take into account severance or injurious affection to land not acquired." It was held that (3) it was for the appellants to establish that they had suffered damage in the diminution of the value of the hotel land due to severance and they failed to prove that they suffered any such damage." And we quote from the judgment of Lord Dilhorne LC found at p. 73 of the report "it was for the appellants to establish that they had suffered damages in the diminution of the value of the hotel land due to severance. Their Lordships agree with the majority of the Court of Appeal that the appellants have failed to prove that they

suffered any such damage." And it is our view that the applicant has failed to satisfy this court that they have in fact suffered any damages for the land that was not acquired due to injurious affection.

[45] The court, having considered the circumstances of the properties involved in the above cited English case and the circumstances involving Lot Nos. 17, 41 and 42 Section 45 in this instant case, holds the view that the principles cited in the English case do not apply to Lot Nos. 17, 41 and 42 Section 45 in this instant case. The cases are clear that no hard and fast rule can be laid down regarding the method, to be adopted for assessing the proper market value of the land acquired and compensation to be awarded for injurious affection. Each case would have to be considered in the light of its special features and special circumstances.

[46] The court looked at the Government Valuers' Valuation Report ('exh. C') and the Government Valuer's *Laporan Tambahan Dan Jawapan Bertulis* ('exh. Cl') and note that although the government valuers did not provide for injurious affection to be awarded in his valuation report (exh. C), the government valuer in his *Laporan Tambahan dan Jawapan Bertulis* (exh. C1) dated 07 July 2010 rectified the position and recommended that injurious affection be awarded at 30% of the market value on the remaining un-acquired land.

[47] There was a difference in opinion between the private valuer for Wisma Denmark Sdn Bhd and the government valuer on how Injurious Affection should be computed.

[48] The private valuer for Wisma Denmark Sdn Bhd contended that the applicant should be compensated and be paid and awarded for injurious affection to the applicant's remaining five plots of land with a total land area of 41,041 sq ft (see encl. G, pp. 19-61 in the *buku rujukan ke mahkamah* filed by the respondent for the private valuer's argument).

[49] The government valuer however held the view that injurious affection should only be awarded for Lot No. 38 Section 45 as it was directly affected by the acquisition exercise. It was the government valuer's opinion that the applicant's other properties, because they are not adversely affected should not be awarded injurious affection.

[50] The government valuer in his *Laporan Tambahan dan Jawapan Bertulis* dated 7 July 2010 (exh. Cl) recommended that an amount of RM999,801.45 be awarded to the computed as follows:

Scheduled Land
Lot No 38

	Sq Metre	Sq Ft
Original land area	3,771.0409	40,576.40
Deduct		
Land acquired for LRT in 1994	1,339.8900	14,417.22
Balance as at 1994	2,431.1509	26,159.18
Deduct		
Land acquired in 1996	1,824.0600	19,626.88
Balance un-acquired as at 1996	607.0909	6,532.30
Injurious Affection		

[As computed and shown in the Government Valuer's *Laporan Tambahan Dan Jawapan Bertulis* (Exhibit Cl)] 6,534.665 sq ft x RM510 per sq ft x 30% = RM999,801.45

[51] The assessors, after having taken into consideration the arguments put forth by both the private valuer for Wisma Denmark Sdn Bhd and the government valuer, and after having examined the location of the applicant's remaining un-acquired land *vis-à-vis* Lot Nos. 17, 38, 39, 41 and 42 in Section 45 in relation to the position of the acquired portion of Lot Nos. 38 and 39, are of the opinion that the construction of the access road to the elevated highway would not adversely affect the ability of the applicant to implement any approved development plan on Lot Nos. 17, 41 and 42 in Section 45. The applicant's ability to continue to use and enjoy Lot Nos. 17, 41 and 42 would also not be adversely affected by the construction of the access road to the elevated highway on the acquired portion of Lot No. 38 and 39.

[52] The assessors are in agreement and are minded to recommend that no injurious affection be awarded for Lot Nos. 17, 41 and 42, Section 45.

[53] In respect of the manner and basis for the computation of compensation for injurious affection to be awarded to the applicant, both the government valuer and the private valuer adopted a formula for the computation of compensation for Injurious Affection at the rate of 30% of the market value of the remaining unacquired portion of Lot Nos. 38 and 39, Section 45 before the acquisition of the said land.

[54] The government valuer and the private valuer however differs in their respective opinion of the market value of Lot Nos. 38 and 39, Section 45 before the acquisition of the said land.

[55] The assessors are in agreement and are minded to recommend that injurious affection be awarded only for the remaining un-acquired portion of Lot Nos. 38 and 39, Section 45 and at the rate of 30% of their market value as at 24 October 1996 (which market value shall be determined by the court) of the remaining unacquired portion before the acquisition of the said land.

[56] In respect of the respondent's award of compensation for the said land, in the light of the provisions in para. 1(A) in the First Schedule of the Act and after considering the respondent's sale evidences in Item Nos 10 and 11 in the Government Valuer's *Butir-Butir Perbandingan Jualbeli Hartanah* and after considering the private valuer's sale evidence in Item No 1 in the private valuer's list of evidences of sale and after having made adjustments for time lapsed since the sale of the properties on 30 October 1996 and 29 December 1993 respectively, the assessors are minded to amend and vary the respondent's decision and award.

[57] The assessors are in agreement and are minded to recommend that the market value of the said land as at 24 October 1996 be set at RM600 per sq ft. for both Lot Nos. 38 and 39, Section 45, Jalan Ampang, Kuala Lumpur.

[58] For the reasons stated above, this court orders that the respondent's decision and award be varied in the manner as follows:

1.00 Compensation for Land acquired

This Court orders that the Applicant be paid an amount of RM600 per sq ft amounting to RM15,195,000 for the land acquired with total land area of 25,325 sq ft (2,353.64 sq metres) computed in the manner as follows:

Lot No	Land Acquired	Compensation Award
38	19,627 sq ft	RM11,776,200
39	5,698 sq ft	RM 3,418,800
Total	25,325 sq ft	RM15,195,000

2.00 Compensation for Injurious Affection

This Court orders that the Applicant be paid an amount of RM3,944,880 for Injurious Affection to the remaining unacquired portion of Lot No. 38 and 39 Section 45 with total land area of 25,334 sq ft computed in the manner as follows:

Lot No 38

	Sq Metre	Sq Ft
Original land area as at 24-10-1996	2,431.1509	26,159.18
Deduct		
Land acquired in 1996	1,824.0600	19,626.88
Balance as at 24-10-1996	607.0909	6,532.30

Lot No 39

	Sq Metre	Sq Ft
Original land area as at 24-10-1996	1,959.2708	21,082
Deduct		
Land acquired in 1996	529.5800	5,698
Balance as at 24-10-1996	1,429.6900	15,384

Computation of Injurious Affection

Lot No	Remaining Land
38	6,532 sq ft
39	15,384 sq ft
	21,913 sq ft

21,916 sq ft x RM600 per sq ft x 30% = RM3,944,880

3.00 Award of Court

The Court awards the applicant a total sum of RM19,139,880 (Ringgit Malaysia Nineteen Million One Hundred and Thirty Nine Thousand Eight Hundred and Eighty Only) as compensation computed as follows:

	RM
(i) Compensation for Land acquired	15,196,000
(ii) Compensation for Injurious Affection	3,944,880
Total Compensation	19,139,880

The respondent awarded the applicant a sum of RM13,091,526.64 for the acquired portion of Lot No. 38 and 39 Section 45 with total land area of 25,325 sq ft.

Balance of the RM19,139,880 award due and payable to the applicant is RM6,048,353.36 computed as follows:

Award of Court	RM19,139,880
Award of Respondent	RM13,091,526.64
Balance payable to Applicant	RM 6,048,353.36